

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION**

DJM, by his next friend, DM)	
And DM and JM, individually,)	
)	
Plaintiffs,)	
v.)	Cause No. 2:08-CV63
)	
HANNIBAL PUBLIC SCHOOL)	
DISTRICT #60,)	
)	
and)	
)	
JILL JANES,)	
)	
Defendants.)	

ANSWER

COMES NOW Defendants Hannibal Public School District #60 (the “District”) and Jill Janes (“Ms. Janes”) (collectively referred to as “Defendants”), by and through their undersigned attorneys, and for their Answer to Plaintiffs’ First Amended Petition state as follows:

1. Defendants deny any and all allegations in Paragraph 1 of Plaintiffs’ Petition.
2. Paragraph 2 of Plaintiffs’ Petition is a legal conclusion and no response is necessary. To the extent a response is required, Defendants deny the allegations in Paragraph 2 of Plaintiffs’ Petition.
3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of Plaintiffs’ Petition, and therefore deny these allegations.
4. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of Plaintiffs’ Petition, and therefore deny these allegations.

5. Defendants admit the allegations set forth in Paragraph 5 of Plaintiffs' Petition.

6. Defendants admit the allegations set forth in Paragraph 6 of Plaintiffs' Petition.

7. Paragraph 7 of Plaintiffs' Petition is a legal conclusion and no response is necessary. To the extent a response is required, Defendants deny the allegations in Paragraph 7 of Plaintiffs' Petition.

8. Defendants admit the District initially suspended Plaintiff out of school for ten (10) days for drafting and delivering instant messages to another student stating his intention to bring a gun to school and kill certain classmates.

9. Defendants admit Jill Janes extended the out of school suspension for the remainder of the 2006-2007 school year (126 days) for drafting and delivering instant messages to another student stating his intention to bring a gun to school and kill certain classmates.

10. Defendants admit the allegations set forth in Paragraph 10 of Plaintiffs' Petition.

11. Defendants admit the allegations set forth in Paragraph 11 of Plaintiffs' Petition.

12. Defendants admit the allegations set forth in Paragraph 12 of Plaintiffs' Petition.

13. Defendants admit the allegations set forth in Paragraph 13 only to the extent that the Board's written decision was provided to Plaintiff. Defendants deny the remaining parts of Paragraph 13 in Plaintiffs' Petition.

COUNT I – ADMINISTRATIVE REVIEW

14. Defendants hereby incorporate and restate their responses in Paragraphs 1 through 13, as referenced herein.

15. Defendants deny any and all allegations in Paragraph 15 of Plaintiffs' Petition.

16. Paragraph 16 of Plaintiffs' Petition is a legal conclusion and no response is necessary. To the extent a response is required, Defendants deny the allegations in Paragraph 16 of Plaintiffs' Petition.

17. Defendants deny any and all allegations in Paragraph 17 of Plaintiffs' Petition.

18. Defendants deny any and all allegations in Paragraph 18 of Plaintiffs' Petition.

19. Defendants deny any and all allegations in Paragraph 19 of Plaintiffs' Petition.

20. Defendants deny any and all allegations in Paragraph 20 of Plaintiffs' Petition.

21. Defendants deny any and all allegations in Paragraph 21 of Plaintiffs' Petition.

WHEREFORE, having fully answered Count I of the Plaintiffs' Petition, Defendants Hannibal Public Schools #60 and Jill Janes respectfully state Plaintiffs are not entitled to the relief sought and Defendants request this Court dismiss Count I of Plaintiffs' Petition in its entirety, or in the alternative, the Court enter judgment in favor of Defendants, and the Court further enters its Order granting Defendants their reasonable attorneys' fees and costs, and for such other relief as the Court may deem just and proper.

COUNT II – 42 U.S.C.A. § 1983

22. Defendants hereby incorporate and restate their responses in Paragraphs 1 through 21, as referenced herein.

23. Defendants deny any and all allegations in Paragraph 23 of Plaintiffs' Petition.

24. Defendants deny any and all allegations in Paragraph 24 of Plaintiffs' Petition.

25. Defendants admit Plaintiff maintained a property interest in his public education.

In further answer, Defendants state Plaintiff was fully provided with all due process procedures, both substantive and procedural, prior to receiving his long-term suspension.

26. Defendants deny any and all allegations in Paragraph 26 of Plaintiffs' Petition.

27. Defendants deny any and all allegations in Paragraph 27 of Plaintiffs' Petition.

28. Paragraph 28 of Plaintiffs' Petition is a legal conclusion and no response is necessary. To the extent a response is required, Defendants deny the allegations in Paragraph 28 of Plaintiffs' Petition.

29. Defendants deny any and all allegations in Paragraph 29 of Plaintiffs' Petition.

30. Defendants deny any and all allegations in Paragraph 30 of Plaintiffs' Petition.

31. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 of Plaintiffs' Petition, and therefore deny these allegations.

WHEREFORE, having fully answered Count II of the Plaintiffs' Petition, Defendants Hannibal Public Schools #60 and Jill Janes respectfully states Plaintiffs are not entitled to the relief sought and Defendants request this Court dismiss Count II of Plaintiffs' Petition in its entirety, or in the alternative, the Court enter judgment in favor of Defendants, and the Court further enters its Order granting Defendants their reasonable attorneys' fees and costs, and for such other relief as the Court may deem just and proper.

AFFIRMATIVE DEFENSES

Defendants set forth the following affirmative defenses to Plaintiffs' Petition:

1. Defendants deny each and every allegation of fact and/or conclusion of law that is not expressly and specifically admitted.

2. All counts of Plaintiffs' Petition fail to state a claim upon which relief can be granted and should therefore be dismissed with prejudice.

3. The Defendants have not violated Plaintiffs' constitutional rights.

4. Plaintiffs' comments to his fellow student constitute true threats of violence

against other students, warranting discipline.

5. The District's policy is constitutional and justified.

6. All actions taken by Defendants with respect to Plaintiffs were taken in good faith belief that their actions complied with all applicable laws and constitutional provisions.

7. Plaintiffs' claims against Defendants are frivolous, and have no basis in law or fact. Therefore, Defendants are entitled to an award of its reasonable attorneys' fees and costs.

WHEREFORE, having fully answers Counts I & II of Plaintiffs' Petition, Defendants Hannibal Public School District #60 and Jill Janes respectfully request this Court dismiss Counts I & II of Plaintiffs' Petition in their entirety with prejudice, or in the alternative, that the Court enter judgment in favor of Defendants, and that the Court further enter its Order granting Defendants their reasonable attorneys' fees and costs, and for such other relief as the Court may deem just and proper.

Respectfully submitted,

MICKES GOLDMAN O'TOOLE, L.L.C.

/s/ Joseph M. Wientge, Jr.
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via CM/ECF Filing on this 4th day of December, 2008, upon the following:

Branson L. Wood III
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ATTORNEYS FOR PLAINTIFFS
